

HOUSING DEVELOPMENT INCENTIVE PROGRAM (HDIP)

IMPLEMENTATION GUIDE

October 1, 2014

I. Introduction

These Guidelines will assist Gateway municipalities (Municipalities) to implement the Housing Development Incentive Program and submit applications for approval by the Department of Housing and Community Development (DHCD). The Guidelines are intended for use in conjunction with the statute and regulations in order to ensure compliance with all program requirements. The Guidelines also include DHCD's application review criteria. Please note that DHCD may also consider other criteria that may reasonably relate to program goals.

DHCD's Division of Communities Services and Division of Housing Development are jointly responsible for the operation and administration of the Housing Development Incentive Program, including the approval of Housing Development (HD) Zone designations, HD Zone Plans, certifications of HD Projects, HD Tax Increment Exemption Agreements, and awards of HD Tax Credits. Municipalities and project developers (Sponsors) are strongly encouraged to communicate with DHCD staff during both the planning and implementation of their HD Zone Plans and HD Projects, respectively, so that issues and problems can be identified early in the process and addressed expeditiously.

II. Program Description

The Housing Development Incentive Program (HDIP) was established as M.G.L. c. 40V pursuant to St. 2010, c.240 section 105, *An Act Relative to Economic Development Reorganization*. The program was amended under St. 2014, c. 287 section 40, *An Act to Promote Economic Growth Across the Commonwealth*. The regulations, 760 CMR 66.00, which were published in June 2012 remain unchanged. The regulations establish rules, standards and procedures for program implementation. The HDIP provides Municipalities with another development tool to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in designated areas.

The HDIP provides two tax incentives to Sponsors to undertake substantial rehabilitation of properties for lease or sale as multi-unit market rate housing:

- A local-option real estate tax exemption on all or part of the increased property value, resulting from improvements (the increment), that is available by right; and
- A state tax credit for Qualified Substantial Rehabilitation Expenditures (QSREs) that is awarded through a rolling application process.

The HDIP is compatible with other state and federal programs, and there are no restrictions on the leveraging of other sources of funding for use in HD Projects.

Please note that DHCD does not administer or interpret the tax laws of the Commonwealth, and taxpayers or transferees using or considering participation in the HDIP cannot rely on DHCD or its staff for advice or guidance in regard to tax matters. Such taxpayers and transferees are advised to consult their tax advisors and the MA Department of Revenue (DOR) on all tax matters relating to the HDIP.

Overview of Approval Process

1. Municipality undertakes neighborhood planning and civic engagement process.
2. Municipality approves HD Zone, a geographic area with a documented need for multi-unit market rate housing development.
3. Municipality approves HD Zone Plan, a detailed description of current and proposed development and redevelopment activities, both public and private, for the HD Zone.
4. Municipality and Sponsor negotiate HD Tax Increment Exemption (TIE) Agreement for a proposed HD Project located in the HD Zone that is consistent with the HD Zone Plan.
5. Municipality and Sponsor execute TIE Agreement for the proposed HD Project.
 - A TIE Agreement between a Municipality and Sponsor may be executed at any time following local or state approval of the HD Zone and Zone Plan.
6. Municipality submits HD Zone designation and HD Zone Plan to DHCD for approval.
7. DHCD approves HD Zone and HD Zone Plan.
8. Sponsor submits Application to DHCD for Preliminary Certification of the HD Project.
9. DHCD approves Preliminary Certification of proposed HD Project.
10. Sponsor submits Application to DHCD for Conditional Certification of proposed HD Project, including executed TIE Agreement and request for HD Tax Credits.
11. DHCD approves Conditional Certification of proposed HD Project, including conditional approval of HD TIE Agreement and award of HD Tax Credits.
12. Sponsor begins construction of HD Project.
13. Sponsor completes construction and 80% of market rate units are occupied.
14. Sponsor submits Application to DHCD for Final Certification of HD Project and Qualified Substantial Rehabilitation Expenses.
15. DHCD approves Final Certification of HD Project and Qualified Substantial Rehabilitation Expenditures.
16. DHCD approves executed TIE Agreement.
17. DHCD awards HD Tax Credits.
18. DHCD notifies the Department of Revenue of Final Certification.

III. Definitions of Key Terms – c. 40V §1; 760 CMR 66.02

Certified Housing Development (HD) Project: a housing development project approved by DHCD for participation in the HDIP. It must be a multi-unit residential rehabilitation project that is located in a Municipality and once substantially rehabilitated shall contain a minimum of 80% market rate units. There are no restrictions on the size of projects. A

Certified HD Project may be comprised of one or more buildings on one or more contiguous parcels of land, provided that they are permitted and financed as a single undertaking.

Gateway Municipality (Municipality): pursuant to Chapter 23A section 3A a municipality with a population greater than 35,000 and less than 250,000, a median household income below the state average and a rate of educational attainment of a bachelor's degree or above that is below the state average. The following are Gateway Municipalities: Attleboro, Barnstable, Brockton, Chelsea, Chicopee, Everett, Fall River, Fitchburg, Haverhill, Holyoke, Lawrence, Leominster, Lowell, Lynn, Malden, Methuen, New Bedford, Peabody, Pittsfield, Quincy, Revere, Salem, Springfield, Taunton, Westfield, and Worcester.

Housing Development (HD) Zone: a geographic area designated by a Municipality for development and redevelopment. The HD Zone is the area where the HD Tax Increment Exemption and the HD Tax Credit are available to eligible Sponsors. There are no restrictions on the location of HD Zones. They may be located in any area of a Municipality characterized by a need for multi-unit market rate housing development. However, there is a minimum size requirement of two or more contiguous parcels of land. In addition, the HD Zone must always be larger than the number of parcels comprising a single HD Project and be of sufficient size that implementation of the HD Zone Plan will have an impact on housing development, diversity of housing supply, economic development, and neighborhood stability in the HD Zone. In addition, a HD Zone:

- Must have the same geographic boundaries as the area covered by HD Zone Plan;
- May encompass the same target area designated under another state program (e.g., urban renewal, District Improvement Financing, Growth District Initiative, CDBG);
- May be located in one or more Municipalities provided that these areas are contiguous; each Municipality must go through a separate approval process; and
- May include one or more HD Projects; two or more HD Projects within the same HD Zone need not be located on contiguous parcels.

Qualified Substantial Rehabilitation Expenditure (QSRE): the total development cost including both hard and soft costs, related to development of market rate housing:

- Eligible demolition costs are limited to interior demolition and roof and wall demolition associated with adding stories to, or expanding the foot print of, an existing building;
- Other demolition and acquisition costs are ineligible expenses.

Substantial Rehabilitation and Substantially Rehabilitated: the needed major redevelopment, repair and renovation of a property including:

- Limited new construction such as construction of upper stories on existing buildings, expansion of the foot print of existing buildings and redevelopment of a site after demolition of a portion or all of an existing building(s);

- Rebuilding on a site after demolition of an existing building provided that demolition is undertaken by the same Sponsor as part of the redevelopment of the site and does not commence prior to the date that DHCD approves Preliminary Certification for the HD Project; and
- Construction costs per unit of not less than \$30,000.

IV. Local Approval Process – 760 CMR 66.03

Before submitting an application for approval of a HD Zone and HD Zone Plan to DHCD, a Municipality shall implement a local review and approval process pursuant to 760 CMR 66.03, *Local Approval Process*. Documentation that the Municipality has complied with the local approval process shall be submitted as part of the Application for HD Zone Designation. All requisite documentation, including authorizing signatures and identification of municipal boards, agencies or authorized officers designated to execute HD Tax Increment Exemption Agreements shall be submitted to DHCD.

A. Public Hearing

A public hearing shall be held by the chief executive officer, other authorized officer or entity, or the designee of such officer or entity to accept testimony on whether the Municipality shall approve both the designation of the HD Zone and the proposed activities in the HD Zone Plan. Notice of the hearing shall be published in a newspaper of general circulation in the Municipality in each of two successive weeks, with the last publication being at least three days prior to the hearing. If a HD Zone includes areas in more than one Municipality, each Municipality shall follow the requirements for local approval in 760 CMR 66.03 and 66.08. A joint hearing may also be conducted provided that the public hearing notice is published in local papers and posted in locations serving all participating Municipalities and the hearing is held in a location accessible to all participating Municipalities. A Municipality may supplement its published hearing notification with electronic notification.

B. Local Approval

Following the public hearing, the Municipality's legislative body may make amendments and approve the HD Zone and HD Zone Plan, as amended, with concurrence of the chief executive officer, subject to the Municipality's charter. The approval shall include the authority to implement Tax Increment Exemptions from property taxes of not less than 10% and not more than 100% of the market rate units within Certified HD Projects for a period not to exceed 20 years for all or a portion of the increment in accordance with M.G.L. c. 59 section 5M.

C. Negotiation of HD Tax Increment Exemption Agreements

Following local approval of the proposed HD Zone designation and HD Zone Plan, individual HD Tax Increment Exemption Agreements may be negotiated and subsequently executed with interested Sponsors, both for-profit and non-profit. The Agreements may be executed by a municipal designee or any other officer or entity as specified in the HD Zone Plan. HD Tax Increment Exemption Agreements shall provide that they are subject to the approval of DHCD in order to become effective. HD Tax

Increment Exemption Agreements may also be negotiated and executed at any time following DHCD approval of the HD Zone and HD Zone Plan. All HD Tax Increment Exemption Agreements shall be incorporated into the appropriate HD Zone Plan. See **Section VIII. HD Tax Increment Exemptions** below for additional information.

V. The Application for HD Zone Designation – c. 40V §2; 760 CMR 66.04

Following local approval, the Municipality's chief executive officer shall submit an Application to DHCD for designation of the HD Zone and approval of the HD Zone Plan. Applications with proposed HD Zones located in two or more Municipalities must include all requisite information, documentation and authorizing signatures for each participating Municipality. The participating Municipalities must also designate a single Municipality to make all submissions to DHCD required by 760 CMR 66.04 and to receive all communication from DHCD regarding such submissions. DHCD may request a meeting to discuss the proposed Application at its office or on-site at the Municipality in order to tour the proposed HD Zone.

DHCD will not issue a separate application form for designation of the HD Zone. However, each Application must include the following information and materials:

A. Cover Sheet

Attach a Cover Sheet to the Application with the following information:

- Name of Municipality or of designated lead Municipality if joint application; include the names of other participating Municipalities;
- Contact information for the Application and for implementation of the HD Zone Plan (if different), including name, title, address, telephone number, and e-mail address;
- Contact information for the municipal board, agency or authorized officer designated to execute HD Tax Increment Exemption Agreements, including name, title, address, telephone number, and e-mail address; and
- Authorization by the Municipality's chief executive officer or other authorized officer or entity that the proposed Application for HD Zone Designation meets the requirements of 760 CMR 66.00; for a joint Application include a separate authorization by the chief executive officer or other authorized entity for each participating Municipality.

B. Table of Contents and Pagination

The Application must include a Table of Contents. It should also include tabs separating each section of the Application and all pages should be numbered sequentially, including maps and any appendices and attachments.

C. Evidence of Public Hearing

Submit documentation that a public hearing was held, including:

- A copy of the public hearing notices; and
- Minutes of the hearing and attendance sheet(s)

D. Approval by Municipal Legislative Body

Submit documentation of Municipal approval, including:

- Certified copy of the vote;
- Concurrence of the CEO; and
- Authorization to implement HD Tax Increment Exemptions

E. Executive Summary

The Application submission must include an Executive Summary or overview, including:

- The name of the proposed HD Zone;
- Location of the proposed HD Zone;
- Objectives of the proposed HD Zone Plan;
- A brief explanation of the need for multi-unit market rate housing in the proposed HD Zone;
- A brief description of development and redevelopment activities, both public and private, proposed for the HD Zone, if known; and
- Identification of the amounts, types and locations of proposed HD Projects and other market rate housing proposed for the HD Zone, if known.

F. HD Zone

The Application must include the following information and data describing the proposed HD Zone:

1. Name of the proposed HD Zone;
2. Written designation of the proposed HD Zone;
3. Rationale for defining the boundaries as proposed;
4. Independent and verifiable documentation demonstrating the need for multi-unit market rate housing development in the HD Zone (e.g., census data, other demographic data, economic development study, housing study);
5. Explanation of how the HD Zone is appropriately located to support the objectives of the HD Zone Plan, including sufficient likelihood that market rate housing will actually be developed; and
6. GIS quality maps depicting existing conditions in the proposed HD Zone. A separate map appropriately labeled must be submitted for each of the following:
 - a. Boundaries of the HD Zone and any significant distinct features that help define the nature and scope of the HD Zone;
 - b. Locus within the Municipality;
 - c. Existing property lines and foot-prints of buildings;
 - d. Existing zoning of each parcel; and
 - e. To the extent relevant, the existing land use of each parcel.
7. If the HD Zone includes areas in more than one Municipality these areas shall be contiguous and the description shall delineate the entire HD Zone together with the municipal boundaries.

G. HD Zone Plan – 760 CMR 66.04(2)

The HD Zone Plan is submitted with the Application for HD Zone Designation. A Municipality may submit an existing local plan (e.g., master plan, Gateway Plus Action

Grant plan, neighborhood strategic plan, urban renewal plan, downtown revitalization plan) as its proposed HD Zone Plan supplemented with additional information and revised, as appropriate, to meet HDIP requirements. A Municipality with two or more HD Zones must prepare a separate HD Zone Plan for each HD Zone designation. A separate application for each HD Zone designation and HD Zone Plan must be submitted to DHCD for approval.

The HD Zone Plan is not intended to be a comprehensive planning document such as a Master Plan or urban renewal plan. Instead, it is a description of proposed development, redevelopment, revitalization, and related activities that will be implemented in the HD Zone over time – to the extent known at the time of application. The HDIP should be treated as one tool within a larger toolkit for promoting market rate housing development and neighborhood revitalization/stabilization.

The HD Zone Plan must contain:

1. Objectives of the HD Zone Plan, including a discussion of how implementation of the HD Zone Plan will meet the goals of the HDIP to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in the proposed HD Zone. Municipalities are encouraged to include separate objectives for each of these goals, as appropriate, and to identify milestones with timelines. Objectives should be measurable and may include: increase pedestrian activity, generate new tax revenue, decrease downtown vacancy rate, promote upper story development, and rehabilitate historical buildings.
2. A detailed description of the construction, reconstruction, rehabilitation, and related activities, public and private, proposed for the HD Zone as of the date of its adoption. This presents the larger redevelopment/revitalization context in which the HDIP will operate and that will support/complement the development of market rate housing (e.g., infrastructure and streetscape improvements; open space; pedestrian and bicycle access/circulation; other housing development, both affordable and market rate; public art);
3. Information on who will be undertaking the described development activities, if known;
4. GIS quality maps depicting proposed development activities in the HD Zone. With respect to such activities, a separate map appropriately labeled must be submitted for each of the following:
 - a. Location of proposed development and redevelopment activities, public and private, including identification of potential HD Projects, if known;
 - b. Proposed changes to property lines and foot-prints of existing buildings;
 - c. Proposed uses of each parcel, including identification of land in mixed use and land in public use;
 - d. Proposed zoning changes related to proposed uses; and
 - e. Identification of all existing and proposed HD Zones within the Municipality.
5. A tabular analysis comparing existing zoning requirements to proposed zoning requirements;

6. A statement that any proposed HD Project(s) identified in the HD Zone Plan is eligible to receive a Preliminary Certification pursuant to 760 CMR 66.05(2);
7. Identification of the geographic area used in calculating the area's median household income that is the target for market rate units in HD Projects (see **Section H** below for additional information), the Target Median Household Income established for the pricing area and the methodology used;
8. A timeline for implementation of the HD Zone Plan containing a description of anticipated events, including public and private construction during the first five-year period and for the duration of the HD Zone Plan, to the extent known;
9. A statement identifying the duration of the HD Zone Plan that is not less than five years or more than 20 years from the date of DHCD's approval of the HD Zone designation;
 - a. The duration of a HD Zone Plan may not be less than the duration of Certified HD Projects located in the HD Zone;
 - b. The approval date of the HD Zone Plan may affect the duration of subsequent HD Projects since the maximum 20 year term begins with DHCD approval of the HD Zone Plan;
10. At a later time, as the HD Zone Plan is being implemented, a Municipality may request an amendment to its HD Zone designation and HD Zone Plan pursuant to 760 CMR 66.09, in order to extend their duration beyond 20 years in order to accommodate new HD Projects over time, as appropriate.
11. A statement of how the Municipality will advance its affirmative fair housing obligations in the HD Zone; and
12. An explanation of how the HD Zone Plan is consistent with other municipal or regional plans and initiatives relating to planning and community and economic development, including a master plan, urban renewal plan, South Coast Rail Corridor Plan, 495 MetroWest Development Compact Plan, Gateway cities initiatives, Business Improvement Districts, 43D, and 43E.
13. Any other reasonable information requested by DHCD.

H. Pricing of Market Rate Residential Units

Pursuant to M.G.L. 40V section 1, a market rate housing unit is a residential unit priced for households with incomes above 110% of the area's household median income. There are no ceilings on the pricing of sales or rents and there are no income restrictions for occupants.

"HDIP Pricing Area" is the geographic area used by the Municipality to establish the HDIP Area Household Median Income (HDIP AMI) used to calculate the target for Market Rate Residential Units in HD Projects. The "Target Median Household Income" is the current HDIP AMI multiplied by 110%. The HDIP Pricing area may be the proposed HD Zone or some other relevant area contiguous to and inclusive of the HD Zone. The regulations do not mandate the size or location of the HDIP Pricing Area. Rather, the regulations set forth the requirements for DHCD approval of such areas:

- 110% of the median household income for this area must be greater than 60% of the median household income used by the U.S. Department of Housing and Urban Development (HUD) for determining the eligibility, including any

applicable caps, for the Section 8 Housing Choice Voucher Program in the applicable Metropolitan Statistical Area or HUD Metro Fair Housing Rent Area; and

- 110% of the median household income for this area must be at a level that will allow the HD Zone Plan to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in the HD Zone.

DHCD recognizes that there is no one single Massachusetts housing market. Rather, there are many local housing markets, and they differ significantly from each other. Each Municipality also differs with respect to the median household income within its own borders, and the relationship of that income to the HUD region's median household income. Therefore, the regulations provide the flexibility for each Municipality to propose a relevant area that more accurately reflects local market conditions.

In proposing an HDIP Pricing Area, the Municipality may use the city as a whole, a single census tract, a combination of census tracts, or other relevant geographic area (e.g., combination of census blocks or the HUD Metro Fair Market Area), inclusive of the proposed HD Zone. For example, if a Municipality consists of 16 census tracts, there may be a combination of three to four contiguous tracts (including HD Zone) that reflect a median household income that would be high enough to support market rate units and also realistic for the market as it presently exists within the Municipality. Once an HDIP Pricing Area is approved by DHCD, the pricing for market rate units would be established based on 110% of the median household income within the HDIP Pricing Area pursuant to the statute.

Once an HD Zone Plan and an HDIP Pricing Area (with resulting HDIP AMI) have been approved, the Municipality has no direct role in setting the rents or purchase prices for the market rate units. The pricing for those units is proposed by each Sponsor in its application submission to DHCD for Conditional Certification. At that stage, which may be immediately after the HD Zone Plan has been approved or may be years later, the Sponsor must price its units for households at 110% or more of the HDIP AMI (the Target Household Income) applicable at the time of the Sponsor's application. The Sponsor's application for Conditional Certification must contain evidence showing that the asking rents or purchase prices are set for this target income level. This evidence is likely to be included in the Sponsor's market study. However, the Sponsor may refer to any data that is commonly used by developers in pricing new or substantially rehabilitated units, including publicly available or proprietary data.

Examples

Using Census Tracts to Identify HDIP Pricing Area

Assume Municipality A believes that there is a demand for more market rate housing in census tract 2 and creates an HD Zone defined by that census tract. The contiguous tracts are 1, 3, 4, 5, 12, 13, and 14. Tract 4 is outside Municipality A. The Municipality's HUD 60% area median income limit for a three-person household is \$52,860. Since the median household income for the Municipality is \$46,000, the Municipality as a whole would not be suitable as the HDIP Pricing Area, because \$46,000 is below the 60% HUD area median income limit.

The Municipality considers the possibility of using tract 2 and the census tracts contiguous to it to establish the HDIP Pricing Area. According to current census figures, the median household income of each of these tracts is:

Tract	Median Household Income	Tract	Median Household Income
1	\$53,000	5	\$44,000
2	\$ 44,500	12	\$33,188
3	\$ 54,000	13	\$46,174
4	\$ 57,320	14	\$49,000

If all eight contiguous tracts are used to define the area median household income, it would still be below HUD's 60% area household income limit. By using several other combinations, however, the Municipality could define a more appropriate HDIP Pricing Area.

Option A using five tracts

Tract	Median Household Income	Tract	Median Household Income
1	\$53,000	4	\$ 57,320
2	\$ 44,500	14	\$49,000
3	\$ 54,000		

The median is \$53,000 (middle tract is the median). The Target Household Income is \$58,300 (\$53,000 x 110%), which exceeds HUD area median household income of \$52,860 and therefore qualifies this configuration of census tracts as an acceptable HDIP Pricing Area.

Option B using seven tracts

By dropping one tract (12), the median household income for the group is now \$49,000. The Target Household Income is \$53,900 (\$49,000 x 110%), which exceeds the HUD area median household income of \$52,860 and therefore qualifies this configuration of census tracts as an acceptable HDIP Pricing Area.

After weighing both options and considering local market conditions, the Municipality selects Option B. To calculate the Target Household Income for other household sizes, the Municipality uses HUD's methodology found in its income limit documents. Municipality A incorporates the census data and calculations into its HD Zone Plan for DHCD approval.

Using the HDIP Area Median Income Level to Price Units

Assume a Sponsor has a proposal for a HD Project with 24 rental units, including four affordable units. In pricing the market rate units, the Sponsor must price for the Target Household Income which is equal to 110% of the median income for the HDIP Pricing Area. In Municipality A's HD Zone Plan, the median income for the HDIP Pricing Area was \$49,000 when approved in 2012. At the time of the Sponsor's application in 2013, the HDIP AMI for the same census tracts is now \$49,500 and (multiplied by 110%) the Target Household Income is \$54,450. The Sponsor has the latitude to target higher incomes.

In its planning stages, the Sponsor makes a number of significant decisions about the product that the HD Project will offer: bedroom configuration, grade of building materials, kitchen and bathroom fixtures, level of finish, etc. Based on a market study and other data, the Sponsor believes that the project location and the quality of the product will appeal to prospective tenants with the incomes required by the HD Zone Plan. Using the market study and other data commonly used to price new or substantially rehabilitated units, the Sponsor's proposed pricing is:

# of Units	BRs/Household Size	Income Range	Annual Rent Level	Monthly Rent Level
4	1/One or Two	\$45,000-\$65,000	\$15,600	\$1,300
12	2/Three or Four	\$55,000-\$75,000	\$19,200	\$1,600
4	3/Four or Five	\$60,000-\$80,000	\$24,000	\$2,000
4*	2/Three or Four	\$44,051-\$58,146	\$15,600	\$1,300

*Affordable. In this example, the Sponsor is targeting HUD's 50 to 60% AMI tier. Proposed rents for the affordable units include utilities and trash collection.

The income range is an indication of what income levels are likely to find the product and pricing attractive; this range will differ by bedroom configuration and household size. The Target Household Income, adjusted to household size, is at the lower end of this range for the market rate units.

In submitting its application for Conditional Certification, the Sponsor submits the data used to price the units, showing that the proposed rents and product will appeal to prospective tenants outside the Municipality who are presently paying higher rents for comparable units. The Sponsor's market study includes considerable data about the primary and second markets, including aggregate demand, distribution of household incomes, percentage of income spent on housing, rent levels at comparable/competitive properties, HUD's current Fair Market Rents for Municipality A, all of which support the Sponsor's pricing. In addition, the Sponsor includes a management company survey showing that the proposed rents are likely to draw households at the requisite income levels.

While the Sponsor should be prepared to explain its assumptions as to what percentage of income a prospective tenant or buyer is willing (or required by market conditions) to devote to housing, this percentage may vary locally.

DHCD approves the application for Conditional Certification, with the understanding that the Sponsor will market the units as proposed during the initial lease-up period.

VI. DHCD Approval of Application for HD Zone Designation – c. 40V §2; 760 CMR66.04(3)

DHCD must approve or deny an Application for HD Zone Designation within 60 days of receipt of a complete Application. When a HD Zone includes areas in more than one Municipality, DHCD actions pursuant to 760 CMR 66.04 shall apply to the HD Zone and HD Zone Plan in its entirety. If DHCD determines that an Application is not complete it shall provide the Municipality with an opportunity to submit additional information and materials to supplement its Application. If DHCD determines that the proposed HD Zone or HD Zone Plan do not meet the requirements of M.G.L. c. 40V and 760 CMR 66.00, it shall provide written notice to the Municipality of its denial of the Application, including the reasons for this determination.

Criteria for DHCD approval of the proposed HD Zone designation and HD Zone Plan are:

- The Application is complete;
- There is a documented need for multi-unit market rate housing in the proposed HD Zone;
- The proposed HD Zone is appropriately located to support the objectives of the HD Zone Plan;
- Implementation of the proposed HD Zone Plan will meet the goals of HDIP, including increasing residential growth, expanding diversity of housing stock,

- supporting economic development, and promoting neighborhood stabilization in the proposed HD Zone; and
- The HDIP AMI used by the Municipality to calculate the Target Household Income for pricing market rate housing units in HD Projects is appropriate.

DHCD's approval of the proposed HD Zone designation and HD Zone Plan becomes effective only upon the recording of DHCD's notice of approval with the appropriate registry of deeds and/or land court registry. Recording shall be undertaken by and at the expense of the Municipality or the Sponsor. Upon approval, the HD Zone designation and HD Zone Plan shall be final and cannot be amended except as provided at 760 CMR 66.08. When a HD Zone includes areas in more than one Municipality, DHCD actions pursuant to 760 CMR 66.04 shall apply to the HD Zone and HD Zone Plan in its entirety.

VII. Application for Certification of HD Projects and Qualified Substantial Rehabilitation Expenditure – c. 40V §4; 760 CMR 66.05

Following its approval of a HD Zone designation and HD Zone Plan, DHCD will accept applications from Sponsors for certification of housing development projects as HD Projects and of certification of QSREs pursuant to M.G.L. c. 40V and 760 CMR 66.05. Only Certified HD Projects may participate in the HDIP and are eligible for the local HD Tax Increment Exemption and state HD Tax Credits.

Certification has three distinct stages: Preliminary Certification, Conditional Certification and Final Certification. Each stage requires submission of a separate application that will update prior submissions and provide additional information required by the statute and regulations. There are three separate TIE templates: rental only, for-sale only, and a mix of rental and for-sale units. Applications are available on-line in word format (www.mass.gov; search key word HDIP). They must be supported by independent and verifiable information and signed under the penalties of perjury by a person authorized to bind the Sponsors.

An application that provides all the information required under M.G.L. c. 40V and 760 CMR 66.05 will be considered complete. DHCD may request additional information to supplement an incomplete application. DHCD may also request a meeting(s) with the Sponsor alone or with the Municipality at DHCD's office or on-site in the Municipality to discuss a proposed housing development project and application submission.

1. Application for Preliminary Certification – Site and Building: shall include the following information and materials related to the proposed HD Project:
 - a. A map identifying the locus of the building(s);
 - b. Site plan showing lot lines, building footprints and general dimensions;
 - c. Photographs of the exterior and interior of the building(s);
 - d. Evidence of the need for Substantial Rehabilitation;

- e. A narrative description of the proposed Substantial Rehabilitation of the building(s), including the total number of proposed housing units and the number and percentage of proposed market rate units;
- f. A narrative description of proposed nonresidential uses in a mixed-use project;
- g. An estimate of the Substantial Rehabilitation costs;
- h. Evidence the Sponsor has site control;
- i. Identification of anticipated relocation of tenants, residential and business, temporary and permanent, pursuant to the federal Uniform Relocation Act and M.G.L. c. 79A;
- j. A narrative description of current and proposed investments and construction, public and private, that will directly support, although not necessarily exclusively, the proposed HD Project such as infrastructure improvements or a parking facility;
- k. A map identifying the location of current and proposed public construction, public and private, that will support the proposed HD Project;
- l. Request from the chief executive officer of the Municipality that the housing development project be approved as a HD Project;
- m. Certified copy of the vote by the Municipality to enter into an agreement for a tax increment exemption under M.G.L. c. 59 section 5M and M.G.L. c. 40V section 4(b)(i); and
- n. Any additional reasonable information that may be requested by DHCD.

DHCD will approve the Application for Preliminary Certification and issue a Preliminary Certification acknowledging that the building meets the standards of a Certified HD Project if it determines that the building meets the requirements of M.G.L. c. 40V section 4(a)(i) – (iv) and (vi) either in its present state or upon Substantial Rehabilitation:

- Is located in a proposed or designated HD Zone characterized by a need for multi-unit market rate housing development;
- Contains two or more housing units for sale or lease upon completion of the proposed rehabilitation; may be mixed-use development;
-
- Contains at least 80% of the housing units as market rate;
- Is a Substantial Rehabilitation of an existing building; and
- Demonstrates municipal support for the proposed project.

2. Application for Conditional Certification – Rehabilitation Plans: is submitted prior to project construction and may be filed in conjunction with the Application for Preliminary Certification. The Application shall contain the following information and materials:
 - a. Construction plans and specifications;
 - b. Construction cost estimate prepared by a qualified third party;
 - c. Identification of all financing sources (construction and permanent lenders);

- d. Firm commitments for these sources sufficient to cover all development and operating costs;
- e. Comprehensive letter of interest from a syndicator or investor, as applicable;
- f. Evidence that the proposed market rate units, whether for lease or sale, will be priced for households with an income of not less than 110% of the HDIP AMI, including a narrative and supporting documentation that describes the methodology for setting the unit prices;
- g. Documentation that there is reasonable likelihood that the Sponsor will be successful in the sale or lease of the market rate units, including a narrative and supportive data demonstrating their marketability.
- h. Operating pro formas, including trending assumptions and debt service coverage acceptable by current industry standards and acceptable to DHCD;
- i. Construction schedule;
- j. A request signed by the Municipality's chief elected officer that the proposed HD Project be certified by DHCD.
- k. A formal written determination by the Municipality that the proposed HD Project:
 - i. Is consistent with and can reasonably be expected to benefit significantly from the Municipality's plans relative to the HD Tax Increment Exemption;
 - ii. Together with other projects previously certified and located in the same HD Zone, shall not overburden the Municipality's supporting resources; and
 - iii. Together with the municipal resources committed to the HD Project, shall, if certified, have a reasonable chance of increasing residential growth, increasing diversity of housing supply, supporting economic development, and promoting stabilization in the HD Zone, as advanced in the HD Zone Plan.
- l. An executed HD Tax Increment Exemption Agreement between the Sponsor and the Municipality under M.G.L. c. 59 section 5M;
- m. Residential marketing strategies and plan including affirmative fair housing outreach;
- n. A request for designation of the housing development project as a Certified HD Project for a specified number of years of not less than five and not more than 20 years; and
- o. Any additional reasonable information that may be requested by DHCD.

Application review criteria are:

- Proposed Scope of Work is appropriate;
- Per unit construction costs are \$30,000 or greater;
- Total development cost of the project is reasonable in the context of industry standards;
- Specific categories of project costs are reasonable, including estimated hard costs, estimated soft costs and projected operating costs;

- All financing sources have been identified and committed;
- Proposed HD Project is ready to proceed;
- There is a reasonable likelihood that if the HD Project is completed as proposed it will further the goals of the HDIP and the specific objectives of the HD Zone Plan;
- There is satisfactory evidence that the proposed market rate units will be priced for households at 110% or greater of the HDIP AMI;
- There is documentation, including a market analysis, demonstrating the market demand for these units;
- The HD Project is feasible during construction and after completion, including evidence that financing, property management, and asset management plans will be sufficient to cover all development and operating costs and to ensure the HD Project's ongoing financial stability;
- Third party market study demonstrates HD Project will have less than 10% capture rate in Primary Market;
- Affirmative Fair Housing Marketing Plan/Tenant Selection Plan is acceptable; and
- An executed HD Tax Increment Exemption Agreement has been submitted.

If DHCD determines that the proposed HD Project continues to meet the requirements of a Preliminary Certification pursuant to 760 CMR 66.05(1)(a) and the proposed rehabilitation meets the definition of a Substantial Rehabilitation at 760 CMR 66.02, DHCD shall approve a Conditional Certification acknowledging that if the housing development project is completed as proposed, it will meet the standards for a Certified HD Project and for Final Certification of QREs.

At this stage DHCD may also conditionally approve executed HD Tax Increment Exemption Agreements and award HD Tax Credits for Sponsors subject to completion of their HD Projects and approval by DHCD of Final Certifications.

DHCD will award HD Tax Credits and determine the amount and duration of the HD Tax Credits based on the following additional criteria:

- The need for multi-unit residential development in the Municipality;
- The need for diversity of housing supply in the Municipality;
- The extent to which the Certified HD Project will encourage residential development, expand diversity of housing supply, promote economic development, and support neighborhood stabilization in the HD Zone;
- The number and percentage of market rate units contained in the Certified HD Project;
- Integration of HD Project with other development and redevelopment, public and private, in the HD Zone;
- HD Project's consistency with the Commonwealth's Sustainable Development Principles, including the extent to which it includes elements of "green design" and promotes conservation of energy resources;

- The amount and percentage of the local HD Tax Increment Exemption;
 - Strength of the development team, including a positive record in market rate housing development and management;
 - Status of compliance monitoring with other tax credit programs;
 - Good standing with respect to other state housing programs;
 - Amount of developer fee/overhead; and
 - Effect of geographical balance in the allocation of HD Tax Credits.
3. Application for Final Certification: is submitted when the Substantial Rehabilitation is complete and certificates of occupancy have been issued for the entire housing development project and 80% of the market rate units have been leased or sold to the parties who will occupy them as primary residences.

The Application shall contain the following information:

- a. Cost certification by a certified public accountant in a form required by DHCD – only if the Sponsor has been awarded conditional HD Tax Credits as part of its Conditional Certification or if the Municipality otherwise requires this information;
- b. Representative photographs of the completed work, both exterior and interior;
- c. A certification by the Sponsor that the rehabilitation work has been completed substantially in accordance with the construction plans and specifications upon which DHCD relied in approving the Application for Conditional Certification;
- d. Certificates of occupancy for the entire project, including evidence that 80% of the market rate units have been leased or sold to the parties who will occupy them as primary residences;
- e. The pricing of rents or sales for the market rate units;
- f. Evidence that units were marketed in a way consistent with Sponsor's representations in the Application for Conditional Certification and the Affirmative Fair Housing Marketing Plan approved by DHCD; and
- g. Any additional reasonable information that may be requested by DHCD.

If DHCD determines that the housing development project has been completed in a manner that is consistent with the Conditional Certification and meets the standards of M.G.L. c. 40V section 4, DHCD shall approve the application and issue a Final Certification. A Final Certification will designate the housing development project as a Certified HD Project, state the amount of the QSRE and state the duration of the Certification. DHCD will also issue an Eligibility Statement to the taxpayer for submission to DOR when the HD Tax Credits are actually taken.

All market rate housing units must be marketed in a fair and open process consistent with state and federal fair housing laws. Provided that a Sponsor complies with fair housing laws and pursues the marketing strategies and plan for

market rate units in a manner that is consistent with the representations made by the Sponsor in its Application for Conditional Certification and with the practices of the commercial real estate industry, the following shall not be grounds for denying Final Certification:

- The bona fide sale or lease of market rate units to unrelated households with incomes less than 110% of HDIP AMI established for the HD Zone; and
- The bona fide sale or lease of market rate units at a price or rent below the level proposed in good faith at the time of the Application for Conditional Certification.

Within 10 days of approving the Final Certification DHCD must provide a copy of the Final Certification to DOR.

VIII. HD Tax Increment Exemptions – c. 59 §5M; 760 CMR 66.06

A. HD Tax Increment Exemption Agreements

Following local approval of the proposed HD Zone designation and HD Zone Plan, individual HD Tax Increment Exemption Agreements may be negotiated and subsequently executed with interested Sponsors. The Agreements may be executed by a municipal designee or any other officer or entity as specified in the HD Zone Plan. Each HD Tax Increment Exemption Agreement is a binding legal document requiring the Sponsor to undertake Substantial Rehabilitation of a proposed HD Project located in a HD Zone according to the locally approved HD Zone Plan and to maintain the property, as developed, in good, decent, safe, and sanitary condition in partial consideration of a HD Tax Increment Exemption.

1. Sponsors subject to tax pursuant to M.G.L. c. 59 section 5M are eligible to received exemptions from local property tax;
2. A Municipality may approve an Exemption Percentage of not less than 10% and not more than 100% of the incremental value of the market rate units within a Certified HD Project;
3. The duration of the Increment Exemption may not be less than five years or more than 20 years;
4. The Exemption Percentage need not be the same for all Sponsors and may change from year-to-year during the term of the HD Tax Increment Exemption pursuant to a schedule set forth in the HD Tax Increment Exemption Agreement;
5. The terms of the HD Tax Increment Exemption Agreement should be sufficient to ensure compliance by both the Sponsor and Municipality with the HD Zone Plan and with 760 CMR 66.00;
6. HD Tax Increment Exemption Agreements may be executed by Sponsors and Municipalities at any time following local approval of HD Zones and HD Zone Plans;
7. HD Tax Increment Exemption Agreements shall include:
 - a. The name of the HD Project;
 - b. The location of the HD Project;

- c. A description of the HD Project, including the number of total housing units and the number and percentage of market rate units;
 - d. Specification of the Substantial Rehabilitation to be undertaken by the Sponsor;
 - e. A development schedule;
 - f. A detailed sources and uses budget;
 - g. The terms of the Tax Increment Exemption, including:
 - i. The Exemption Percentage for each fiscal year;
 - ii. The Base Valuation;
 - iii. Any agreement as to the initial valuation of the Increment for each fiscal year; and
 - iv. An explanation in support of any assumptions or calculations related to the Increment and Base Value.
 - h. All material representations and any other commitments made by either the Sponsor or the Municipality and relied on by the other in entering the HD Tax Increment Exemption Agreement;
 - i. A statement that the HD Tax Increment Exemption Agreement is not effective until:
 - i. DHCD approves the HD Tax Increment Exemption Agreement; and
 - ii. The Substantial Rehabilitation is complete and DHCD has approved Final Certification for the HD Project.
 - j. A statement that the effective date of the HD Tax Increment Exemption is the first fiscal year following DHCD's Certification of the HD Project;
8. The HD Tax Increment Exemption Agreement shall not become effective until:
- a. It has been executed by the Sponsor and Municipality;
 - b. DHCD approves the housing development project as a Certified HD Project;
 - c. It has been approved by DHCD; and
 - d. Notice of the certification is recorded with the appropriate registry of deeds or land court registry.
9. DHCD will approve the HD Tax Increment Exemption Agreement if it meets the standards and requirements of 760 CMR 66.06:
- a. It is recommended that a draft copy of the negotiated HD Tax Increment Exemption Agreement be submitted to DHCD for review prior to its execution so that problems/concerns can be addressed before it is finalized for signature; and
 - b. DHCD reserves the right to request additional information to supplement its review of the HD Tax Increment Exemption Agreement.
10. Upon approval by DHCD, HD Tax Increment Exemption Agreements shall be made part of the appropriate HD Zone Plan;
11. DHCD may approve HD Tax Increment Exemption Agreements for Certified HD Projects that are not awarded HD Tax Credits, including those that do not seek such credits.
12. DHCD will indicate its intention to approve a HD Tax Increment Exemption Agreement at the same time it approves an Application for Conditional

Certification, subject to completion of the HD Project and DHCD approval of Final Certification.

B. Base Value

The Base Value is the Assessed Value of the parcel of property as of the fiscal year in which a HD Tax Increment Exemption Agreement is executed by the Municipality and Sponsor with respect to that parcel, and prior to the start of any Substantial Rehabilitation activities, including demolition, minus the Assessed Value attributable to any portion of the property that was assessed as other than residential in the applicable fiscal year and remains non-residential after completion of the Substantial Rehabilitation. In HD Projects with a mix of rental and for-sale units, the Base Value shall be apportioned between the rental and for-sale units based upon their respective proportion of the usable square footage upon completion of the Substantial Rehabilitation.

C. Calculating HD Tax Increment Exemption

The amount of the HD Tax Increment Exemption to be given to a Sponsor of a HD Project shall be determined by applying the Exemption Percentage to the property tax on the Increment.

Key for Calculating Amount of Increment	
AV	Assessed Value after Substantial Rehabilitation
H	Housing portion of HD Project
MRH	Market rate housing portion of HD Project
SF	Useable square foot
<i>R</i>	<i>Rental portion</i> of mixed rental and for-sale HD Project
MRHR	<i>Rental portion</i> of market rate housing in mixed rental and for-sale HD Project
<i>S</i>	<i>For-sale portion</i> of mixed rental and for-sale HD Project
MRHS	<i>For-sale portion</i> of market rate housing in mixed rental and for-sale HD Project
<i>x</i>	<i>Multiply by</i>
--	Minus

Increment for Rental Housing

$$\text{AV of H} - \text{BV} \times \frac{\% \text{ SF of MRH}}{\text{Total SF of H}}$$

Increment for For-Sale Housing

$$\text{AV of H} - \text{BV} \times \frac{\% \text{ SF of MRH}}{\text{Total SF of H}} \times \frac{\% \text{ SF of MRH Unit}}{\% \text{ SF of MRH}}$$

Increment for Mix of Rental & For-Sale/Rental Portion

$$\text{AV of } R - \text{BV of } R \times \frac{\% \text{ SF of MRHR}}{\text{Total SF of } R}$$

Increment for Mix of Rental & For-Sale/For-Sale Portion

$$\frac{AV \text{ of } S - BV \text{ of } S \times \frac{\% \text{ SF of MRHS}}{\text{Total SF of } S} \times \frac{\% \text{ SF MRHS Unit}}{\text{Total SF of MRHS}}}{}$$

Examples - Calculating HD Tax Increment Exemption

For each of the three examples below, the HD Project involves Substantial Rehabilitation of a building with three floors: an upper floor with four residential units, an unused upper floor, and three street-level retail units. The property's Base Value is \$400,000, the Assessed Value in the fiscal year in which the HD Tax Increment Exemption Agreement is negotiated. The HD Tax Increment Exemption Agreement provides that the Sponsor will receive an Exemption Percentage of 25% in years 1-5, 15% in years 6-10, and 10% in years 11-15.

Example #1: Eight rental units (six market rate and two affordable) and three retail units. Assume the Assessed Value after Final Certification of the HD Project is \$800,000 and \$600,000 of this value is attributable to the residential units. Assume the Assessed Value attributable to the retail units (which are remaining non-residential) was \$200,000 in the base year. The Assessed Value of the residential portion (\$600,000) minus the Base Value (\$400,000 minus \$200,000) is \$400,000. If each unit is 1,000 usable square feet, the ratio of usable square footage of the market rate units (6,000) to the total usable residential square footage (8,000) is 75%. The Increment is \$400,000 multiplied by 75%, or \$300,000. The Tax Increment Exemption starts in year one at \$300,000 multiplied by 25%, or \$75,000.

Example #2: Eight for-sale units (six market rate and two affordable) and three retail units. Assume the Assessed Value after Final Certification of the HD Project is \$800,000 and \$600,000 of this value is attributable to the residential units. Assume the Assessed Value attributable to the retail units (which are remaining non-residential) was \$200,000 in the base year. The Assessed Value of the residential portion (\$600,000) minus the Base Value (\$400,000 minus \$200,000) is \$400,000. If each unit is 1,000 usable square feet, the ratio of usable square footage of the market rate units (6,000) to the total usable residential square footage (8,000) is 75%. Each given unit is .1666% of the total usable square footage of all the market rate units. The Increment for each given unit is \$400,000 multiplied by 75% (\$300,000), multiplied by .1666%, or \$49,980. The Tax Increment Exemption starts in year 1 at \$50,000 multiplied by 25%, or \$12,495.

Example #3: Six rental units (four market rate and two affordable), two for-sale units (both market) and three retail units. Determining the Increment Exemption when there is a mix of rental and for-sale units involves making a separate calculation for each category. An essential step is accurately apportioning the Assessed Value and Base Value between the rental and for-sale units. In this example, the Increment for the rental portion is \$300,000 multiplied by 67%, or \$199,800. The Increment for each for-sale unit is \$100,000, multiplied by .5%, or \$50,000. The Tax Increment Exemption for the rental portion starts in year 1 at \$200,000 multiplied by 25%, or \$50,000. The Tax Increment Exemption for each for-sale unit is \$50,000 multiplied by 25%, or \$12,500.

IX. HD Tax Credit – c. 40V §5; c.62 §6(q); c. 63 §38BB; 760 CMR 66.07

DHCD will make awards of HD Tax Credits through a rolling application process. There is a project cap of \$2 million on the amount of HD Tax Credits awarded to individual HD Projects.

1. Individuals or entities subject to tax pursuant to M.G.L. c. 62 section 6(q) and M.G.L. c. 63 section 38BB are eligible to receive HD Tax Credits.
2. HD Tax Credits can only be used by housing development projects that have been certified by DHCD as HD Projects and have executed HD Tax Increment Exemption Agreements approved by DHCD.
3. DHCD approves the amount and credit period of the HD Tax Credits and the credits are available to the taxpayer only to the extent awarded by DHCD.
4. At the Conditional Certification stage, DHCD may approve an award of HD Tax Credits, subject to the HD Project receiving Final Certification and approval of its HD Tax Increment Exemption Agreement.
5. DHCD may award a taxpayer HD Tax Credits of up to 10% of the costs of QSREs of the market rate units within a Certified HD Project.
6. DHCD will allow a maximum developer fee and overhead equal to 5% of acquisition plus: (1) 15% of the first \$3,000,000 in total development costs less acquisition, developer fees and overhead, consultant fees, syndication fees, and reserves; (2) 12.5% of the next \$2,000,000 of rehabilitation costs; and (3) 10% of the remaining rehabilitation costs.
7. All awards of HD Tax Credits shall be for a period of one year subject to carry forward.
8. HD Tax Credits may not be claimed by any taxpayer until DHCD has approved Final Certification for the HD Project and issued an Eligibility Statement.
9. In order to claim HD Tax Credits, a taxpayer must provide DOR with the following:
 - a. Eligibility Statement filed with each MA tax return on which any credits are claimed;
 - b. Allotment Certification, if applicable, pursuant to 66.07(4);
 - c. Transfer Statement, if applicable, in accordance with the requirements of DOR; and
 - d. Massachusetts Carry Forward Agreement, if applicable, in accordance with the requirements of DOR.
10. HD Tax Credits are allowed for the taxable year in which the DHCD gives DOR written notification of its Final Certification of the HD Project and QSREs. The QSREs applicable to the HD Tax Credits are deemed made on this date.
11. The HD Tax Credits are transferrable, in whole or in part, and the transferee must apply the credits against its tax liability in the year the credit was transferred.
12. If the HD Tax Credits available for use for any taxable year exceeds the taxpayer's or transferee's tax liability for that taxable year, the credits may be carried forward for up to five years after the taxable year in which DHCD gives DOR notification of Final Certification of the HD Project.
13. The total amount of HD Tax Credits that may be authorized by DHCD in a calendar year may not exceed \$10 million, including:

- a. Credits awarded during the calendar year; and
 - b. Carry forwards of credits from prior years to the extent that these credits offset tax liabilities during the year.
14. Any portion of the \$10 million annual cap not awarded by DHCD in a calendar year may not be applied to awards in a subsequent year.

Note: Since there is a statutory cap of \$10 million in HD Tax Credits in a given year, DHCD may not be able to award HD Tax Credits to a Certified HD Project. For those Certified HD Projects that do receive HD Tax Credits, DHCD may reduce the amounts and credit period of the HD Tax Credits from original requests in order to stay within the annual cap.

For additional information on HD Tax Credits, refer to DOR's *Technical Information Release 10-14, Certified Housing Development Credit*.

X. Amendments – 760 CMR 66.08

A Municipality may change a DHCD-approved HD Zone, HD Zone Plan or HD Tax Increment Exemption Agreement by submitting an Application for an Amendment to DHCD. Amendments must be approved by DHCD before they become effective. The incorporation of an approved HD Tax Increment Exemption Agreement into a HD Zone Plan is not considered an amendment to the HD Zone Plan.

DHCD determines whether a proposed change is a Material or Nonmaterial Amendment. DHCD shall approve or deny amendments within 60 days of receipt of a complete application. If DHCD determines that the Application is not complete, it shall provide the Municipality with an opportunity to submit additional information to supplement the Application.

A. Material Amendment

Amendments to the HD Zone or HD Zone Plan that change the HD Zone boundaries, other than technical corrections, or have a material effect on the objectives of the HD Zone Plan or the proposed development and redevelopment activities, public and private, as set forth in the Application for DHCD's approval of the HD Zone designation, are considered Material Amendments. Changes to the duration of the HD Zone Plan or to the terms of a HD Tax Increment Exemption Agreement are also considered Material Amendments. Prior to submitting an Application to DHCD, the Municipality must hold a public hearing and obtain local approval by the legislative body with concurrence by the chief executive officer pursuant to 760 CMR 66.08(3)(a) and (b). Municipalities may request a Conditional Approval of the proposed Material Amendment from DHCD prior to obtaining local approval of the Amendment.

B. Nonmaterial Amendment

A Nonmaterial Amendment is a change that does not significantly alter any of the basic material elements of the HD Zone or HD Zone Plan or the terms of a HD Tax Increment Exemption Agreement. Nonmaterial Amendments do not require public hearings but

they do require local approval by the legislative body with concurrence by the chief executive officer.

C. Application for DHCD Approval of an Amendment

Municipalities must submit Applications for both Material and Nonmaterial Amendments to DHCD for approval. The Application must be signed by the Municipality's chief executive officer or other authorized officer or designee. Applications for Amendments must include:

1. A detailed description of each proposed change;
2. The purpose of each change – i.e., the reason why each change is needed;
3. The effect of each change on the objectives of the HD Zone Plan and the proposed development and redevelopment activities, public and private, as set forth in the application for DHCD's approval of the HD Zone Plan;
4. The effect of each change on individual HD Projects;
5. Pertinent revisions of the original Application for approval of the HD Zone designation or HD Zone Plan, or to the HD Tax Increment Exemption Agreement, to reflect the changes;
6. A presentation of whether the Amendment is Material or Nonmaterial;
7. Evidence of a public hearing, as appropriate, including a copy of hearing notices and minutes; and
8. Certification by the Town or City Clerk of local approval pursuant to 760 CMR 66.08(3).

D. DHCD Approval

DHCD shall approve Amendments to HD Zones and HD Zone Plans if it determines that the proposed change will not:

- Have a material, detrimental effect on the objectives of the HD Zone Plan and on the proposed development and redevelopment activities, private and public, as presented in the HD Zone Plan; or
- Have a material, detrimental effect on the likelihood that Sponsors will succeed in producing market rate housing or on any individual HD Project.

DHCD shall approve Amendments to HD Tax Increment Exemption Agreements provided that:

- The amended HD Tax Increment Exemption Agreement remains in compliance with the standards and requirements of M.G.L. c. 40V and 760 CMR 66.; and
- The proposed changes would not have altered DHCD's decision to award HD Tax Credits to the Sponsor.

XI. Application Process

The application process -- HD Zone designation with HD Zone Plan, Preliminary Certification, Conditional Certification (including executed HD Tax Increment Exemption Agreement and request for HD Tax Credits), and Final Certification – is delineated below:

1. Municipalities and Sponsors, either separately or together, as appropriate, are encouraged to meet with DHCD staff to discuss their proposed applications prior to submission.
2. To schedule a meeting or to seek assistance, please contact either: Bill Reyelt, Principal Planner, Smart Growth Programs, at (617) 573-1355 or William.Reyelt@state.ma.us, or Rebecca Frawley Wachtel, HOME Director, (617) 573-1318 or Rebecca.Frawley@state.ma.us.
3. DHCD staff may also request on-site visits in Municipalities to discuss application submissions and proposed HD Projects.
4. All applications for DHCD approval will be accepted on a rolling basis.
5. **Applications for HD Zones and HD Zone Plans:**
 - a. Must be submitted electronically as a pdf or by disk to:
William.Reyelt@state.ma.us
 - b. In addition to electronic copies or disks, two hard copies of applications must be submitted by mail delivery to:
Attn: Bill Reyelt/HDIP
DHCD
Office of Sustainable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114
 - c. One hard copy of the application must include the CEO's original signature.
6. **Application for Certification of HD Project (Preliminary, Conditional and Final Certification):**
 - a. Must be submitted electronically as a pdf or by disk to:
Rebecca.Frawley@state.ma.us
 - b. In addition to the electronic copies or disks, two hard copies of each application must be submitted by mail delivery to:
Attn: Rebecca Frawley/HDIP
DHCD
Housing Development
100 Cambridge Street, Suite 300
Boston, MA 02114
 - c. One hard copy of the application must include the CEO's original signature.
 - d. Electronic applications for Certification of HD Project (Preliminary, Conditional and Final Certification) are available at www.mass.gov/dhcd; search: HDIP.
7. Fax copies of applications will not be accepted.
8. It is the responsibility of applicants to ensure that their applications are received by DHCD.
9. All applications will be logged as to date and time received and kept on file as public record.
10. DHCD reserves the right to request additional information as may be necessary in order to complete application reviews.

XII. Suspension and Revocation of Approval – c. 40V §4(e); 760 CMR 66.04(e) and 66.05(5)

A. HD Zone and HD Tax Increment Exemption Agreement

DHCD approval of a HD Zone designation and HD Zone Plan or a HD Tax Increment Exemption Agreement may be suspended or revoked if DHCD determines that:

- The Municipality's application for approval contained material misrepresentations; or
- The Municipality has failed to adhere to material elements of its application, including, but not limited to, the description of public development and redevelopment activities, the implementation schedule, and compliance with affirmative fair housing obligations.

B. Final Certification

- DHCD approval of the Final Certification of a HD Project may be revoked prior to its expiration date upon:
 1. Petition by the Municipality or DHCD's Undersecretary; and
 2. The independent investigation and determination by DHCD that a Sponsor's conduct subsequent to Final Certification was materially at variance with the representations made by the Sponsor in its Application for Conditional Certification and that such variance is found to frustrate the public purposes that such certification was intended to advance.
- Within 10 days of revoking a Final Certification DHCD shall provide a copy of the Revocation of Final Certification to DOR.
- Following the revocation, the Commonwealth and the Municipality may bring a cause of action against the Sponsor for the value of any economic benefit received by the Sponsor prior to or subsequent to the revocation.
- Revocation shall take effect on the first day of the tax year in which DHCD determines that a material variance commenced.
- DOR may, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the Final Certification.

XIII. Reporting and Review – c. 40V §4(e); 760 CMR 66.09 and 66.10

Municipalities must maintain accurate records and accounts of all activities carried out pursuant to the HD Zone Plan in any HD Zone, including applications for DHCD approval of the HD Zone designation and HD Zone Plan, HD Tax Increment Exemption Agreements, and certifications of HD Projects; requests for amendments; orders or resolutions pertaining to local approvals; and documents pertaining to the application and award of HD Tax Credits.

- All project records shall be maintained and kept for a period of seven years following project completion or three years following the date of final resolution of all legal claims, whichever occurs later.
- Municipalities shall permit DHCD staff or auditors reporting to DHCD to examine and make copies of all records and accounts, as requested.
- DHCD shall review each Certified HD Project at least once every two years and collect information that includes but is not limited to the following:
 1. Amount of HD Tax Increment Exemption;

2. Amount of property tax revenue generated under M.G.L. c. 59;
 3. Occupancy rates;
 4. Rents charged and for-sale prices for market rate housing units;
 5. Any changes in rents or pricing of market rate housing units over the two-year period; and
 6. Any changes in uses of the property.
- Annually, on the first Wednesday in December, DHCD shall file a report with DOR, the Joint Committee on Revenue and the Joint Committee on Housing and Community Development detailing findings from its review of Certified HD Projects in the prior fiscal year.
 - Annually on or before August 1, Municipalities must submit to DHCD Annual Reports about actions undertaken to implement their HD Zone Plans for the prior year, including:
 1. A narrative description of progress made towards implementation of the HD Zone Plan, including all development and redevelopment activities, public and private, completed or in process in the HD Zone and their standing in relation to the milestones and timelines presented in the HD Zone Plan;
 2. The amount and type of new housing development in the HD Zone, including market rate, workforce and affordable housing;
 3. GIS quality maps depicting the locations of new development and redevelopment activities, public and private;
 4. New tax revenue generated in the HD Zone, inclusive of both residential and non-residential property;
 5. The amount of private investment in the HD Zone, to the extent known;
 6. Information on the initial sale and leasing of market rate housing units in each HD Project;
 7. The Increment used to calculate the HD Tax Increment Exemption for the market rate units in each HD Project and the amount of the Increment Exemption;
 8. The amount of property tax generated by market rate units in each HD Project under M.G.L. c. 59;
 9. The total amount of property tax generated by each HD Project, inclusive of both market rate and other housing under M.G.L. c. 59; and
 10. Problems or obstacles to achieving goals of the HDIP and objectives of the HD Zone Plan and possible strategies for addressing them.

XIV. Waivers – 760 CMR 66.11

DHCD's Undersecretary may waive, in writing, any provision of 760 CMR 66.00 et seq. not required by statute, provided that DHCD determines the waiver is consistent with the purposes set out in the statute and regulations and that desired relief is in the public interest. Municipalities and/or Sponsors are encouraged to meet with DHCD staff as early as possible to discuss project eligibility, and whether DHCD should consider specific waiver requests.

Requests for a waiver shall include documentation that the waiver meets all the requirements of the regulations. Requests for waivers should be sent to:

Chrystal Kornegay, Undersecretary
DHCD
100 Cambridge Street, Suite 300
Boston, MA 02114

Copies of the waiver request should also be sent to both Bill Reyelt, Principal Planner, Smart Growth Programs, at William.Reyelt@state.ma.us, and Rebecca Frawley Wachtel, HOME Director, at Rebecca.Frawley@state.ma.us, at the address above.